

## LEAD ENFORCEMENT AGENCY IDENTIFICATION

The purpose of this form is to document the lead enforcement agency designation in accordance with the "Memorandum of Agreement (MOA) Between the Department of the Army and the Environmental Protection Agency (EPA) Concerning Federal Enforcement of the Section 404 Program of the Clean Water Act" dated January 19, 1989.

RECEIVED

OCT 03 2011

**Office of Enforcement  
Compliance & Environmental Justice**

## I. INFORMATION

1. Corps File Number: SPK-2011-00608
2. Location (Lat/Long, Section, Township, Range): Adjacent and along the north bank of the East Inlet to Grand Lake, within the Town of Grand Lake, Latitude 40.2366°, Longitude -105.8021°, Section 9, Township 9 North, Range 75 West, Grand County, Colorado.

3 (see top)

3. Landowners:
- a. James and Kay Bianco, ~~10000 E. 1st Avenue, Denver, CO 80231~~
  - b. ~~Jane B. Bianco, 10000 E. 1st Avenue, Denver, CO 80231~~ in Grand Lake which is a conservation easement on Rocky Mountain National Park)

(Note: Work occurred on private properties within the authorized boundary of the Rocky Mountain National Park (RMNP). The interest held by RMNP is a scenic easement only. The Bianco's have a life-time restraining order against ~~XXXXXX~~)

4. Violators: James and Kay Bianco
5. Contractors:
  - a. Mr. Hammerlund – contractor hired by the Biancos
  - b. Noble Underbrink, Jim Struble, Bill Shearer of Northern Colorado Water Conservancy District (NCWC) – supplied rock and delivered to Biancos on May 4, 6, and 9, 2011.

6. **Date Violation Occurred:** Sometime this spring between May 9 and June 8, 2011
7. **Date of Investigation & Corps Investigators:** Investigation began on June 14, 2011 by Project Manager Mr. Travis Morse with a site investigation occurring on June 29, 2011.

8. Description of Unauthorized Activities: Mr. Mark McCutcheon, District Ranger of Rocky Mtn National Park (RMNP), contacted the Corps by email on June 14, 2011 identifying a potential violation of the Clean Water Act. A report with photos was attached describing the installation of a ~120' of dike and streambank work on the north bank of the East Inlet to Grand Lake and ~ 1 acre of adjacent wetlands areas cleared of vegetation and filled with dirt soil. Another email dated 6/17/11 provided additional information from RMNP which included a

telephone discussion w/Mrs. Bianco in which she confirmed directing and financing the work done and "The Bianco's did not want to apply for a 404 permit (wetland disturbance) from the Army Corps of Engineers because it would take too long." This statement was also confirmed by Mr. Underbrink of NCWC in which "... Bianco's implied the process of any permits would take too long." The Corps investigated by gathering information, interviewing people, and performing a site investigation. Based on investigation, Corps confirmed the Biancos contracted the unauthorized placement of 120' of rock riprap (70 cy) on East Inlet of Grand Lake and clearing and filling 0.17 acre palustrine scrub-shrub wetland. Corps database search indicates several prior correspondences with the Biancos dating back to 1991 (file #199775479). A Notice of Violation was sent to the Biancos on July 18, 2011, and a response received from the Biancos, via ERO Resources Corporation, dated August 8, 2011, requesting an after-the-fact permit to maintain rock riprap and voluntary replanting of the filled wetland area.

9. Classification from Part III. D(1):

- ☐ a. Repeat Violator(s)
- ☒ b. Flagrant Violator
- ☐ c. Particular Case EPA May Request
- ☐ d. Corps Recommends Administrative Penalty

10. Completed Inspection Report (w/photos & maps) and Preliminary Jurisdictional Determination: Attached

11. ORM Database Query Results for Owner/Operator Attached: Revealed previous correspondence with the Biancos dating back to 1991, 1997, and 1998 including the Corps exerting discretionary authority requiring an Individual Permit for work proposed due to high quality of wetlands. No permit application was submitted. File #199775479 correspondences are attached.

12. Corps Recommendations for Resolution: Site restorations

**II. EPA DETERMINATION**

- ☒ EPA will act as lead enforcement agency. 12-29-11, MJA
- ☐ EPA declines the lead enforcement agency role and refers the matter back to the Corps pursuant to Part III. D(2) of the MOA. EPA's recommendations are:

**If applicable:**

EPA requested additional time (date, time, Corps contact): 11-15-11;  
Sue Nall

EPA requested additional information (date, time, Corps contact, type of info): \_\_\_\_\_  
\_\_\_\_\_

**III. JOINT ENFORCEMENT STRATEGY (if applicable)**

Corps Lead:

EPA Lead:

**IV. CERTIFICATION (must be completed)**

	Corps Representative	EPA Representative
Signature/Date	<u>Susan B. Nall</u> 9-28-11	<u>Monica Heimdal</u> 11-15-11 <u>Monica Heimdal</u> 12-29-11
Name/Title	Susan B. Nall / Chief, CO West Regulatory Branch	Monica Heimdal / Enforcement

**Attachments:**

1. Corps File # 2011-608
2. # 199775479